In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 16073 of 2000
Date of Decision: September 28, 2006

Ramphal

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. R.K. Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

These three petitions filed under Article 226 of the Constitution, namely, C.W.P. Nos. 3579 of 2000, 16073 of 2000 and 6580 of 2002, involve a common question of law viz., whether an Ex-servicemen (for brevity, 'ESM') are to be given preference over the dependent of Ex-servicemen (for brevity, 'DESM'). It is an admitted fact that Haryana Subordinate Services Selection Board advertised various posts of Gram Sachivs in Development and Panchayat

Department in 1991, interviews were held and selection was finalised in the year 1992. The petitioners in C.W.P. Nos. 3579 of 2000 and 16073 of 2000 are ESM whereas the petitioner in the third petition bearing C.W.P. No. 6580 of 2002 is DESM. According to instructions dated 21.05.1979 and 21.11.1980 (P-2 and P-3 with C.W.P. No. 6580 of 2002) the DESM could be considered for the post which remain vacant after considering the case of ESM. If a post remain vacant for want of a suitable ESM then the same was to be filled by DESM. However, despite such clear instructions DESM were appointed in preference to ESM. One such DESM is before this Court in C.W.P. No. 6580 of 2002. The other are ESM who feel aggrieved by the action of the respondents for not offering them appointment on the ground that those posts were occupied by the DESM. The aforesaid situation has arisen despite the fact that rights of both ESM and DESM have been crystallized by the judgments of this Court and Hon'ble the Supreme Court as would be evident from the following paras.

After the selection and appointment have been made on the posts of Gram Sachivs, some writ petitions were filed in this Court to challenge the action of the Subordinate Services Selection Board, Haryana, by selecting the DESM in preference to ESM and ignoring their claim. This Court had dismissed those petitions. The matter was taken to Hon'ble the Supreme Court and in Civil Appeal No. 8887 of 1996 along with other appeals, the view taken by this Court was set aside. The instructions dated 21.05.1979 and

21.11.1980 (P-2 & P-3 with C.W.P. No. 6580 of 2002) were interpreted as under:-

> "……As per the instructions issued by the State Government, in the absence of availability of the ex-servicemen instead of keeping those post unfilled, the dependent children, namely, son or daughter of Ex-servicemen would also to be considered. The object thereby would be that the selection Board should first consider the claims of the ex-servicemen and have their eligibility considered independently in the first instance before the claims of the dependent children of the ex-servicemen are considered. If they are found eligible and selected, for the balance unfilled posts, the selection should be done from among the dependent children of the ex-servicemen." (emphasis supplied)

After holding in the aforementioned manner, in the judgment dated 25.3.1996 (P-1 with C.W.P. No. 16073 of 2000) directions were issued by Hon'ble the Supreme Court to the respondents to consider the cases of DESM against the unfilled posts reserved for ESM. The essence of the judgment is that the claim of the DESM could be considered only in the eventuality when the post remain unfilled after due consideration of the cases of the ESM. Accordingly, the Subordinate Services Selection Board re-determined the merit list (P-2). The name of Ramphal (petitioner in C.W.P. No. 16073 of 2000) appeared at Sr. No. 106 and that of Mahesh Chand

(petitioner in C.W.P. No. 6580 of 2002) appeared at Sr. No. 104, who belongs to the ESM category. A show cause notice was issued to the DESM on 14.3.2000, whose services were liable to be terminated. The petitioners who belong to ESM category served a legal notice, dated 11.10.2000 (P-5) asserting their rights in accordance with the merit. However, they were informed that the action for appointment was to be taken after the decision of in the case of Rajesh Kumar Tahlan and others v. State of Haryana and others (C.W.P. No. 15634 of 1999). In Rajesh Kumar Tahlan's case, 2002 (3) SLR 782 (P-4), a Division Bench of this Court had issued the following directions:-

> "It is admitted case that from amongst DESM category, 19 candidates including the petitioners had been selected and appointed. However, in view of the judgment in Dilwan Singh's case (supra) by the Apex Court wherein the requirements for making grade as DESM candidate have been duly explained and have been directed to be followed for consideration the cases of DESM candidates in case there are unfilled vacancies available from ESM category. We find that at present no unfilled vacancy is available from ESM category but in view of the observation of the Apex Court in P.K. Ramchandra's case (supra), we direct that the petitioners who belong to the DESM category, be considered (if already not considered) in accordance with the observation of the Apex Court in Dilwan Singh's case (supra) and the

> suitable candidates so found on merit be allowed to continue on the present posts by way of creating supernumerary posts wherever required. The DESM candidates who are found suitable shall rank junior to the candidates selected pursuant to the advertisement referred here above including private respondents (ESM) that is to say they shall be at the tail end of the selected candidates."

It is, thus, obvious that ESM has to be given appointment. Even the DESM were required to be considered in accordance with the observations made by Hon'ble the Supreme Court in Dilwan Singh's case (supra) and if they were found to be suitable then supernumerary posts, wherever required, were to be created to adjust the DESM. It remains undisputed that the petitioner in C.W.P. No. 3579 of 2000, who belongs to DESM category, has also been found suitable as is evident from the orders dated 30.4.1993 and 8.6.1993 (P-4 and P-5 respectively in C.W.P. No. 3579 of 2000).

In view of the above factual and legal position and the fact that no stay has been granted by Hon'ble the Supreme Court, nor any such order has been produced despite our direction to the learned State counsel vide order dated 21.7.2006, we are of the view that these writ petitions deserve to be allowed as they are covered by the decision of the Division Bench in the case of Rajesh Kumar Tahlan (supra). The ESM in C.W.P. Nos. 16073 of 2000 and 6580 of 2002 shall be given appointment on the post of Gram Sachivs within a

period of one month from the date a certified copy of the order is produced before the respondents. In respect of DESM, it is evident that they are continuing on the posts prior to the passing of the stay order dated 18.5.2000, passed in C.W.P. No. 3579 of 2000. Accordingly, impugned orders dated 14.3.2000 and 27.10.1999 (P-14 and P-15 respectively in C.W.P. No. 3579 of 2000) are quashed. They shall be permitted to continue and the stay order is made absolute. The respondents, however, would be at liberty to create supernumerary posts as per the directions issued in Rajesh Kumar Tahlan's case (supra) in respect of the DESM. The appointment letters to the ESM shall be issued with effect from the date the DESM were appointed. They shall also be entitled to the benefit of fixation of their salary along with other benefits regarding seniority etc., except the payment of arrears. The writ petitions stand disposed of.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 28, 2006
TSM/Pkapoor